A

ABDUL AZEEZ ABDUL RAHIM v. LIM GUAN ENG

COURT OF APPEAL, PUTRAJAYA
AZIZAH NAWAWI JCA
MARIANA YAHYA JCA
AZIMAH OMAR JCA

B

[CIVIL APPEAL NO: P-02(NCvC)(W)-1892-12-2020]
21 AUGUST 2023

Abstract: *(i) In a defamation case, the necessary extent of 'truth' required for a successful defence of justification must commensurate and correspond with the Chase Level imputation of the defamatory statement. When a respondent has made the highest Chase Level 1 imputation in an unequivocal term (that the appellant had indeed committed a wrongdoing), then he must defend the very imputation of guilt. Mere truths of 'reports of an alleged serious act' and 'grounds to investigate an alleged serious act' is simply and utterly insufficient; (ii) It would be remiss and naïve of the courts if it fails to take notice of the peculiar urgency in the respondent's conduct to publish his barrage of alleged defamatory statements without giving reasonable and practical time for an alleged scandal to be properly investigated by the authorities. This indicates that he is acting for his own political interest and personal agenda. In his failure to prove the element of good faith and genuine concern for the truth, clearly indicating a malicious ad hominem (personal) attack against the appellant, the defence of justification, fair comment and qualified privilege is not available to him.*

C

D

E

F

TORT: *Defamation – Libel – Publication of alleged defamatory statements – Whether respondent openly criticised and impugned appellant's character – Whether necessary extent of truth required for successful defence of justification must commensurate and correspond with Chase Level imputation of defamatory statements – Whether peculiar urgency of publication of defamatory statements reflective of respondent's ulterior motive to spread imputation of appellant's guilt of serious wrongdoing to masses prior to general elections – Failure to prove element of good faith and genuine concern for truth – Whether there was malicious ad hominem against appellant's integrity and reputation – Whether defence of fair comment or qualified privilege could be relied on*

G

H

The appeal concerned a claim for defamation by the appellant against the alleged defamatory statements published by the respondent regarding the Penang Undersea Tunnel Project ('PUTP/project'). The appellant was the former Baling Member of Parliament, who was also at the time, the Chairman of the Board of Tabung Haji Malaysia, and a United Malays National Organisation's ('UMNO') Supreme Council Member. The respondent, on the other hand, was the Chief Minister of Penang and also the 4th Secretary General of the Democratic Action Party ('DAP'). The events

I

which formed the basis of the appellant's claim against the respondent unfolded during the months before the 2018 General Elections. Consortium Zenith Construction Sdn Bhd ('Zenith') was the PUTP's appointed main contractor. The present appeal's saga began with the issuance of Zenith's notice of demand to one Jabarullah ('alleged proxy') as well as the appellant ('NOD'). The NOD essentially claimed for the return of an alleged RM3,000,000 paid by Zenith to Jabarullah as the alleged proxy and representative of the appellant in consideration for the appellant's consultation services. Premised only on the issuance of the NOD and the arrest of the alleged proxy for investigation by MACC, the respondent saw it fit to immediately address the press to openly criticise and impugn the appellant's character and suitability as a politician and Chairman of the Board of Tabung Haji Malaysia on the primary ground that the appellant had unlawfully obtained RM3 million by corrupt manipulation and unscrupulous involvement in the PUTP. The appellant had characterised the respondent's alleged defamatory statements into three tranches ('defamatory statements'). The first and second alleged defamatory statements were the alleged slander in which the respondent had orally published five days from the issuance of the NOD during the respondent's own press conference and later on the same day when the respondent addressed the media during a Chinese New Year Open House event hosted by the Perbadanan Pembangunan Pulau Pinang. The third alleged defamatory statements were, by and large, the republication of the first and second alleged defamatory statements (in video recording format) *vide* various online and social media platforms. Not even one week after the appellant's receipt of the NOD, Zenith had promptly retracted and withdrew the NOD against the appellant ('Zenith's withdrawal'). The publication of the respondent's alleged defamatory statements occurred just one day after the appellant's receipt of the NOD, without giving any reasonable and practical time for the alleged scandal to be properly investigated by the authorities and for the appellant to respond against the allegations mounted against him in the NOD. The fact that the entire chronicle of events was just shy of three months away from the 2018 General Elections certainly reflected poorly of the respondent's motivation and peculiar hastiness in publishing the defamatory statements. Premised on the facts above, the appellant commenced a defamation action against the respondent at the High Court. The High Court Judge ('HCJ') dismissed the appellant's defamation claim on the ground that the respondent had succeeded in his defence of justification. Hence, this appeal. The issues that arose were (i) whether the HCJ was correct in her finding of the appropriate *Chase* Level imputation of the respondent's defamatory statements ('issue (1)'); (ii) whether the HCJ was correct in finding that the respondent had succeeded in proving the defence of justification ('issue (2)'); and (iii) whether the respondent could rely on the defence of fair comment or qualified privilege ('issue (3)').

Held (allowing appeal)
Per Azimah Omar JCA delivering the judgment of the court:

(1) The entirety of the respondent's defamatory statements casted a wide net of an array of gruelling statements which clearly impugned the character and reputation of the appellant. It was plain and obvious that the defamatory statements (in its totality) went to the highest and most extreme *Chase* Level 1 imputation that the appellant had indeed committed the wrong (the serious act). There were parts of the respondent's defamatory statements which were slightly more cautious as to refer to an 'alleged' serious act but at the same time, there were also parts of the respondent's defamatory statements that unequivocally and unconditionally declared that the appellant had indeed undoubtedly committed the serious act. (para 36)

(2) There were large portions of the respondent's defamatory statements that did not merely call for an investigation, but were plainly and on equivocal and certain terms that (i) the appellant had received (not merely alleged to have received) three million; (ii) 'every time like this, UMNO (by extension of the appellant being an UMNO member) wrongfully obtained monies'; and (iii) with absolute certainty, the respondent declared that he himself discovered that the appellant had taken millions. The respondent did not merely allude to an alleged serious act. Instead, the declarations that he made was of a high degree of certitude that the serious act had been committed, and that the appellant ought to be arrested for the commission of the serious act. Nowhere at all was the respondent merely calling for an investigation into the mere 'suspicion' of the serious act. A major portion of the defamatory statements were not at all capable of carrying multiple or alternative meaning other than that of a *Chase* Level 1 imputation (that the appellant had indeed committed the serious act). Thus, Issue 1 was answered in the positive. (paras 37-40)

(3) The necessary extent of 'truth' required for a successful defence of justification must commensurate and correspond with the *Chase* Level imputation of the defamatory statement. Thus, since the respondent's defamatory statements were of the highest *Chase* Level 1 imputation, then the truth he must prove was the allegation of guilt itself. He could not resile from this statement of guilt, just to cower behind the 'lesser truth' of a supposed call for an investigation into the commission of the serious act. The 'truths' herein were nowhere near sufficient to justify the respondent's highest *Chase* Level 1 imputation that he himself had 'discovered' that the appellant had fraudulently taken RM3,000,00 from the PUTP through his influence and manipulation as an UMNO's Supreme Council Member. Since the respondent had made *Chase* Level 1 imputations in an unequivocal term, then it was only proper and just

that he must defend the very imputation of guilt. Thus, the mere truths of 'reports of an alleged serious act' and 'grounds to investigate an alleged serious act' was simply and utterly insufficient. Since the respondent had unmitigated confidence in his statement of guilt, then the respondent must have the same unmitigated confidence that he could defend the same imputation of guilt. Issue 2 was therefore answered in the negative. The HCJ had certainly erred in finding that the respondent had succeeded in proving the defence of justification. (paras 42-45)

(4) The respondent was not a common layperson. He was a renowned and seasoned veteran in the political arena. The respondent was also not a stranger to the workings of litigation throughout his venerable political career. Thus, it ought to have been absolutely clear to the respondent that a mere notice of demand was a far cry from absolute evidence of guilt. But instead, he took the NOD and ran a media campaign with it. A mere notice of demand by a lawyer, however serious it may seem, could at best be a mere demand and not at all any cogent proof of the contents of the notice of demand. A respected political veteran of the respondent's stand and calibre must have identified this obvious fact. Further, throughout the entirety of the trial, it was apparent that the respondent had never endeavoured to embark on his own verification of the contents of the NOD. All that was testified was that the respondent relied on the NOD, the arrest of the other named individual and the fact that the appellant had yet to respond to the NOD. There was no evidence whatsoever of the respondent reaching out to the appellant or even Zenith for verification. In essence, there was no verification exercise whatsoever. (paras 46-48)

(5) There was obviously a sense of hastiness and peculiar urgency to the respondent's publication of the defamatory statements. The NOD only stood for one week before it was retracted and withdrawn by Zenith. The appellant had issued a response to Zenith's NOD just two days after the appellant's receipt of the NOD. The NOD was withdrawn only two days after the appellant's official response. The respondent published his defamatory statements just one day after the appellant's receipt of the NOD. The inexplicable, unusual and exceptional hastiness and unwarranted urgency of the respondent were clearly reflective of the respondent's disinterest and indifference of any truth of the NOD. It clearly showed that the respondent's main objective was to just spread the imputation of guilt to the masses as quickly as possible before the appellant was afforded a reasonable opportunity to respond against the NOD. The fact that the 2018 General Elections was only a few months away further crystallised the ulterior motive in the respondent's hasty and hurried publication of the defamatory statements. (paras 49 & 50)

(6) The respondent's defamatory statements were, by and large, an unequivocal statement of fact and not merely an expression of opinion. In the respondent's unequivocal declaration that he had discovered that the appellant had unlawfully took RM3 million from the PUTP, was clearly a statement of fact and not an opinion. Clearly stating that UMNO had obtained 'habuan' and monies *via* the appellant's corrupt involvement in the PUTP was also a statement of fact and not an opinion. Thus, the respondent had failed to prove one of the most crucial elements in the defence of fair comment. The defence of fair comment was not available to the respondent as it was plain and obvious that the respondent was indifferent of the truth and was ready and eager to maliciously pluck any issue so as to impugn the character and reputation of the appellant. The respondent had also failed to prove the element of good faith and genuine concern for the truth. The respondent's inexplicable haste and urgency were reflective of malice and indifference to the truth. In fact, the respondent's allusion or reference to the appellant's position as the Chairman of the Board of Tabung Haji (which was totally unrelated to the PUTP) was clearly indicative of a malicious *ad hominem* (personal) attack against the appellant's integrity and reputation. The respondent would also fail the threshold of the test of 'responsible journalism' to succeed a defence of qualified privilege. (paras 53-58)

(7) As much as the respondent had tenaciously contended that he was privileged to speak on the matter out of genuine interest of the public at large, it was instead thoroughly clear that his defamatory statements were not as noble as the respondent propped them up to be. Instead of genuinely safeguarding the public interest, it was plain and obvious that the respondent had acted for the benefit of his own political and personal agenda and interest. Thereby, the respondent was clearly not entitled to rely on the defence of fair comment or qualified privilege. Issue 3 was therefore answered in the negative. (paras 60 & 61)

Obiter:

(1) The courts remain an invaluable means of check and balance to unravel malfeasance, malpractices, and corruption as and when there is a genuine call for such judicious revelation. This is the difficult dilemma and nuance when political statements are put before the courts for a claim for defamation. Especially so when considering our nation's democratic voting system largely tilts on public image at large and is indeed malleable to *ad hominem* propaganda which would make any political facet to appear to be unsavoury or unfavourable in the public's eyes. The court must identify whether the alleged defamatory statements were a genuine cry for integrity and accountability, or instead a mere ploy to tarnish the image and subdue the political influence of a rival

faction. Notwithstanding, as much as possible, the court ought not to descend from the bench to be assimilated or absorbed into the Executive's theatre of politics.

Case(s) referred to:
Chase v. News Group Newspapers Ltd [2002] EWCA Civ 1772 ***(refd)***
Khairul Azwan Harun v. Mohd Rafizi Ramli [2016] 9 CLJ 858 HC ***(refd)***
Lim Guan Eng v. Ruslan Kassim & Another Appeal [2021] 4 CLJ 155 FC ***(refd)***
Lucas-Box v. News Group Newspapers Ltd; Lucas-Box v. Associated Newspapers Group Plc And Others [1986] 1 All ER 177 ***(refd)***
Mohamed Apandi Ali v. Lim Kit Siang [2022] 7 CLJ 786 HC ***(refd)***
Raja Syahrir Abu Bakar & Anor v. Manjeet Singh Dhillon & Other Appeals [2019] 4 CLJ 301 CA ***(refd)***
Reynolds v. Times Newspapers Ltd & Ors [1999] 4 All ER 609 ***(refd)***

Legislation referred to:
Defamation Act 1957, s. 9

For the appellant - Porres Royan & Craig Ho Wai Ping; M/s Kumar Partnership
For the respondent - Murali Navaratnam & Felix Lim Xian Feng; M/s Murali Navaratnam

[Editor's note: Appeal from High Court, Pulau Pinang; Civil Suit No: PA-23NCVC-12-03-2018 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Azimah Omar JCA:

Introduction

[1] The appeal before us concerns a claim for defamation by Abdul Azeez bin Abdul Rahim ("the appellant") against the alleged defamatory statements published by Lim Guan Eng ("the respondent") regarding the oft-debated Penang Undersea Tunnel Project ("the PUTP/the project").

[2] We are most aware that the PUTP, even to date, remains a live issue within the political sphere and also the criminal courts considering the prosecutions involving known political personas which are still presently ongoing. Much has been said by many political figures from many political fronts regarding the PUTP and the alleged scandals and corruption that shrouded the project.

[3] As a general rule, the courts ought not to interfere with statements published within the political realm as political debate and discourse are also an integral system of check and balance to ensure that the Executive remains responsible and accountable in its exercise of power.

[4] On the same note, neither should the Executive interfere with the Judicial system as a means of advancing their campaign, agenda, or propaganda. Nonetheless, the courts also remain as an invaluable means of check and balance to unravel malfeasance, malpractices, and corruption as and when there is a genuine call for such judicious revelation. This is the difficult dilemma and nuance when political statements are put before the courts for a claim for defamation. Especially so considering our nation's democratic voting system largely tilts on public image at large and is indeed malleable to *ad hominem* propaganda which would make any political facet to appear to be unsavoury or unfavourable in the public's eyes. Thus, the court's task in such cases alike the present appeal is indeed a heavy one.

[5] The court must identify whether the alleged defamatory statements were a genuine cry for integrity and accountability, or instead a mere ploy to tarnish the image and subdue the political influence of a rival faction. Notwithstanding, as much as possible, the court ought not to descend from the bench to be assimilated or absorbed into the Executive's theatre of politics.

Background Facts

[6] For a better understanding of the matter at hand, it is only apt for us to lay down the essential facts of the case which had led the appellant to file the present case.

[7] The appellant was a former Baling Member of Parliament, who was also at the time, the Chairman of the Board of Tabung Haji Malaysia, and a United Malays National Organisation ("UMNO") Supreme Council Member.

[8] The respondent, on the other hand, was the Chief Minister of Penang and was also the fourth Secretary General of the Democratic Action Party ("DAP").

[9] The events which form the basis of the appellant's claim against the respondent unfolded during the months before the 2018 General Election, which was then held on 9 May 2018.

[10] Consortium Zenith Construction Sdn Bhd ("Zenith") was the PUTP's appointed main contractor. The present appeal's saga began with the issuance of Zenith's notice of demand to one, Abdul Jabarullah Kadersah ("Jabarullah/the alleged proxy") as well as the appellant on 23 February 2018 ("the NOD").

[11] The NOD essentially claims for the return of an alleged RM3,000,000 paid by Zenith to Jabarullah as the alleged proxy and representative of the appellant in consideration for the appellant's consultancy services. The appellant received the NOD on 27 February 2018.

[12] Not even a week past the issuance of the NOD (and just one day after the appellant's receipt of the NOD), premised only on the issuance of the NOD and the arrest of the alleged proxy for investigation by the MACC, the respondent saw it fit to immediately address the press to openly criticise and impugn the appellant's character and suitability as a politician and Chairman of the Board of Tabung Haji Malaysia on the primary ground that the appellant had unlawfully obtained RM3,000,000 by corrupt manipulation and unscrupulous involvement in the PUTP.

[13] The appellant had characterised the respondent's alleged defamatory statements into three tranches ("defamatory statements"). The first and second alleged defamatory statements were the alleged slander in which the respondent had orally published on 28 February 2018 (just five days from the issuance of the NOD) firstly during the respondent's own press conference at KOMTAR Penang and later on the same day when the respondent addressed the media during a Chinese New Year Open House event hosted by the Perbadanan Pembangunan Pulau Pinang.

[14] The third alleged defamatory statements were, by and large, the republication of the first and second alleged defamatory statements (in video recording format) *vide* various online and social media platforms. We will delve deeper into these alleged defamatory statements further down this judgment.

[15] Just two days after the appellant's receipt of the NOD, the appellant had *via* his solicitors issued a response against the NOD *via* a letter dated 1 March 2018 to Zenith's solicitors ("appellant's official response").

[16] On 2 March 2018, the appellant lodged a police report in further denial of Zenith's allegations against him.

[17] Not even one week after the appellant's receipt of the NOD, Zenith had on 3 March 2018 (and just two days from the appellant's official response), promptly retracted and withdrew the NOD against the appellant ("Zenith's withdrawal").

[18] It was plainly recorded and admitted within Zenith's withdrawal that the appellant was name-dropped by Jabarullah for him to peddle influence to persuade Zenith to enter into an agreement with Jabarullah (not the appellant).

[19] It was indeed astounding that the entire chronicle of the present appeal revolves around events spanning in just one week. There was only one week between the issuance of the NOD on 23 February 2018 and Zenith's withdrawal on 3 March 2018.

[20] The publication of the respondent's alleged defamatory statements occurred just one day after the appellant's receipt of the NOD. It would be remiss and naïve of us if we failed to take notice of the peculiar urgency and

haste in the respondent's conduct to publish his barrage of the alleged defamatory statements without giving any reasonable and practical time for the alleged scandal to be properly investigated by the authorities and for the appellant to respond against the allegations mounted against him in the NOD.

[21] The fact that the entire chronicle of events was just shy of three months away from the 2018 General Election certainly reflects poorly of the respondent's motivation and peculiar hastiness in publishing the defamatory statements.

[22] Premised on the facts above, the appellant commenced a defamation action against the respondent at the High Court.

The High Court's Findings

[23] The learned High Court Judge ("the learned judge") had dismissed the appellant's defamation claim on the ground that the respondent had succeeded in his defence of justification.

[24] The learned judge firstly found that the respondent's defamatory statements were defamatory to the extent of the highest *Chase* Level 1 imputation (in that the appellant was guilty and **had committed** a serious act). (emphasis added)

[25] The learned judge had found that the respondent's defamatory statements (by its natural and ordinary meaning) were not merely a call for an investigation for suspicion of a wrongful act, but the very commission of a wrongful act: paras. 27 and 28 of the learned judge's grounds of judgment (GOJ).

> 27. Penelitian dibuat kepada Pernyataan-Pernyataan tersebut dan saya dapati Pernyataan-Pernyataan tersebut telah mendedahkan Plaintif kepada kebencian, cemuhan atau penghinaan dalam fikiran seseorang yang munasabah atau cenderung untuk menjatuhkan Plaintif dalam pemikiran masyarakat umum.
>
> 28. Pernyataan-Pernyataan tersebut secara semulajadi dan pengertian membawa erti dan difahami membawa maksud yang Plaintif adalah seorang yang:
>
> (i) Plaintif telah menerima secara menyalahi undang-undang sejumlah RM3,000,000;
>
> (ii) Plaintif telah menyalahguna sejumlah RM3,000,000;
>
> (iii) Plaintif adalah seorang ahli parti politik rasuah *(corrupt political)*
>
> (iv) Plaintif adalah seorang yang bersalah dan telah melakukan sesuatu kesalahan rasuah (*corruption*);

(v) Plaintif telah menggunakan pengaruh dan mengenakan tekanan ke atas Agensi-Agensi Penguatkuasaan terutamanya Polis Diraja Malaysia dan Suruhjaya Pencegah Rasuah Malaysia untuk mengikut arahan Plaintif atau Parti Politik Plaintif;

(vi) Plaintif adalah seorang telah pergi ke luar negara untuk bertemu dengan Pegawai Tinggi Suruhanjaya Pencegah Rasuah Malaysia untuk membincangkan dan atau melakukan sesuatu kesalahan rasuah;

(vii) Plaintif dan atau Parti Politik Plaintif telah menggunakan Suruhanjaya Pencegah Rasuah Malaysia sebagai senjata politik mereka;

(viii) Plaintif yang merupakan ketua UMNO mempunyai pengaruh ke atas media-massa dan telah menyalahgunakan pengaruh tersebut untuk menyebarkan berita palsu;

(ix) Plaintif yang merupakan antara ketua UMNO mempunyai pengaruh ke atas undang-undang dan/atau adalah di atas undang-undang;

(x) Plaintif tidak bermoral untuk menjadi seorang Ahli Parlimen;

(xi) Plaintif adalah seorang penipu dan telah melakukan fraud berkaitan dengan Projek Terowong Bawah Laut Pulau Pinang;

(xii) Plaintif adalah seorang yang tidak berketrampilan kacak;

(xiii) Plaintif adalah terkenal dengan insiden-insiden buruk (*infamous*);

(xiv) Plaintif adalah seorang yang secara salah menerima jutaan ringgit dan telah mengarahkan dan atau meminta Ahli Dewan Undangan Pulau Betong dan Pengerusi Barisan Nasional Pulau Pinang untuk melindungi Plaintif; dan

(xv) Plaintif sendiri atau melalui proxi dan/atau agen telah mengambing hitamkan (*scapegoat*) Defendan dan/atau parti politik Defendan dan/atau Kerajaan Negeri Pulau Pinang dan/atau Ahli Kerajaan Negeri Pulau Pinang;

(xvi) Plaintif merupakan liabiliti dan merugikan (*detrimental*) kepada Tabung Haji;

(xvii) Plaintif tidak bermoral dan/atau tidak sesuai dan/atau tidak layak untuk menjadi Pengerusi Tabung Haji; dan

(xviii) Plaintif dan atau parti politik Plaintif terkenal dengan rasuah dan akan menyebabkan Malaysia lebih terkenal dengan amalan rasuah.

[26] Although the finding that the respondent's defamatory statements were of *Chase* Level 1 imputation, the learned judge found that there were 'true' facts in which the respondent had relied upon to justify the publication of his

defamatory statements. However, we are aware that the standard of proof for justification applied by the learned judge was unfortunately of the mildest *Chase* Level 3 imputation (in that the defamatory statements instead carried a lesser *Lucas-Box* meaning that there are grounds to investigate whether or not the appellant had committed a serious act). Thus, from the outset, there is already a dissonance between the determined *Chase* Level 1 imputation and the accepted *Chase* Level 3 standard of proof for justification: para. 48 of the learned judge's GOJ.

> 48. Maka dengan itu, Mahkamah dapati bahawa pernyataan bahawa:
>
> (i) persoalan kepada SPRM, kenapa Plaintif tidak ditangkap manakala seorang lagi yang dinamakan bersama Plaintif di dalam Notis Tuntutan telah ditangkap;
>
> (ii) terdapat berita-berita yang melaporkan yang Plaintif dikatakan telah menerima RM3 juta daripada Zenith;
>
> (iii) Zenith telah mengeluarkan Notis Tuntutan terhadap Plaintif untuk menuntut kembali RM3 juta yang dibayar kepada Plaintif; dan
>
> (iv) Plaintif dipercayai telah atau didakwa menerima wang sebanyak RM3 juta daripada Zenith;
>
> adalah fakta-fakta yang benar.

[27] The learned judge then concluded that there was no necessity to consider the respondent's other defences of fair comment and qualified privilege on the grounds that the defence of justification is a complete defence: para. 52 of the learned judge's GOJ:

> 52. Walaupun begitu, pembelaan justifikasi ini merupakan satu pembelaan yang lengkap maka pembelaan-pembelaan komen yang adil dan perlindungan bersyarat adalah tidak relevan lagi. Di dalam kes *Irene Fernandez* (*supra*) Mahkamah telah memutuskan bahawa – *"In a defamation action, the defence of justification is a complete defence if it succeeds. And the question of malice or bad faith does not arise".* (emphasis added)

[28] Dissatisfied with the learned judge's decision, the appellant filed the present appeal before us.

The Appeal Before Us

[29] Upon perusing the appellant's memorandum of appeal, the learned judge's grounds of judgment, and the respective parties' written submissions, we are of the view that the propriety of the present appeal can be determined by determining the following issues:

(i) Issue 1: whether or not the learned judge was correct in her finding of the appropriate *Chase* Level imputation of the respondent's defamatory statements;

(ii) Issue 2: whether or not the learned judge was correct in finding that the respondent had succeeded in proving the defence of justification; and

(iii) Issue 3: whether or not the respondent could rely on the defence of fair comment or qualified privilege.

Issue 1: Whether Or Not The Learned Judge Was Correct In Her Finding Of The Appropriate Chase Level Imputation Of The Respondent's Defamatory Statements

[30] First and foremost, we are minded of the fact that the respondent was attempting to impress upon the court that at no point in time did the respondent ever made any concrete statement of fact that the contents of the NOD were true (in that the appellant had *via* his proxy, unlawfully taken RM3,000,000 *via* his corrupt involvement in the PUTP ("the serious act")).

[31] The respondent is attempting to gloss or 'dull' the sting of his defamatory statements in that the respondent had supposedly meant to state the following:

(i) the respondent had only referred to the 'alleged' fact that the appellant had committed the serious act and that the appellant ought to be arrested and investigated;

(ii) the respondent never stated with certainty that the appellant had committed the serious act;

(iii) the respondent's reference to the appellant was instead only a call for an investigation or enquiry as to why the appellant was not arrested by the MACC when the other persona who obtained RM19,000,000 from the PUTP was already arrested by the MACC for investigation;

(iv) the respondent's reference to the appellant (and the serious act) was instead only his criticism against the political attacks by UMNO, MCA, and BN; and

(v) the respondent's reference to the appellant (and the serious act) was instead only his criticism against the selective "witch hunt" by the allegedly politically manipulated MACC.

[32] In essence, the respondent is attempting to convince the court that his defamatory statements are capable of an alternative lesser *Lucas-Box* meaning. For context, it has long been a principle in defamation cases that the interpretation of defamatory statements may vary and is colourable to be more extreme or even less damning. This principle was propounded by the UK Court of Appeal in the case of *Lucas-Box v. News Group Newspapers Ltd; Lucas-Box v. Associated Newspapers Group Plc & Ors* [1986] 1 All ER 177:

> We fully appreciate that *where an action in defamation is tried with a jury it is for the jury to decide what meaning or meanings the words in fact bear. They are not limited by the meanings which either the plaintiff or the defendant seeks to place on the words.* Accordingly, a defendant who seeks to rely on the defence of justification does not wish to tie himself to a potential defamatory meaning which may turn out to be more serious than that which a jury ultimately conclude to be the true defamatory meaning. Counsel for the defendant in the first action also raised before us the situation which he says often faces a defendant. The plaintiff at trial may abandon the more serious defamatory meaning which he has pleaded and rely on a relatively innocuous meaning. If the defendant has set up a potentially defamatory meaning which is more serious than that ultimately relied on by the plaintiff and sought in his pleadings to justify that meaning, the plaintiff will thus have, at least on the pleadings, material which he can use against the defendant. (emphasis added)

[33] In brief, it is not uncommon in defamation actions that the defendant would strive to impress upon the court that the defamatory statements are capable of a 'lesser' and more "innocuous" *Lucas-Box* meaning than that of the higher and more serious meaning that the plaintiff might suppose. And if the defendant were successful to do so, then he needs only prove the defence of justification to the threshold of justifying the publication of the lesser *Lucas-Box* meaning of the defamatory statements.

[34] This *Lucas-Box* principle was further expanded and given more clarity by the England and Wales Court of Appeal in the case of *Chase v. News Group Newspapers Ltd* [2002] EWCA Civ 1772 by classifying defamatory statements into three "*Chase* Levels" of imputation:

> [37] Under modern libel practice a defendant must set out in his/her statement of case the defamatory meaning he/she seeks to prove to be essentially or substantially true. This is now known as the *Lucas-Box* meaning, following the leading case of *Lucas Box v. News Group Ltd* [1986] All ER 177, [1986] 1 WLR 147. By this means the claimant (and the court) will know unequivocally what the defendant is seeking to justify.
>
> …
>
> [45] **The sting of a libel may be capable of meaning** that a claimant **has in fact committed some serious act,** such as murder. **Alternatively,** it may be suggested that the words mean that **there are reasonable grounds to suspect that he/she has committed such an act. A third possibility** is that they may mean that **there are grounds for investigating** whether he/she has been responsible for such an act. (emphasis added)

[35] Closer to home, the machination of this classification was recently digested by the High Court in the case of *Mohamed Apandi Ali v. Lim Kit Siang* [2022] 7 CLJ 786; [2022] 11 MLJ 655. For ease of reference, the relevant excerpts of that decision are reproduced below:

[36] The *colourable and variable nature of the 'sting of libel' has been addressed in the landmark commonwealth decision of Chase v. Newsgroup Newspapers Ltd [2002] EWCA Civ 1772 ('Chase')* in which the court there has propounded the *Chase* Levels principle. The court in *Chase* essentially propounded that a defamatory statement may carry with it three defamatory imputations of varying degrees. *Level 1 being the extreme imputation that the plaintiff has indeed committed a serious act, Level 2 being the milder imputation that there are justifiable grounds to suspect that the plaintiff has committed the same act, and lastly Level 3 being the lesser imputation that there are grounds that the plaintiff ought to be investigated for the probable commission of the same act.*

[37] The identification of the proper *Chase* Level is pertinent as different *Chase* Levels will later (in the second tier of the exercise) determine the degree or threshold of justification required for the defendant to succeed in a defence of justification. The entire principle and machination of the *Chase* Level principle has been astutely digested by S Nantha Balan J (now JCA) in the case of *Khairul Azwan bin Harun v. Mohd Rafizi bin Ramli* [2017] 9 MLJ 205:

…

[96] Following the case of *Chase*, it is now settled that:

(a) words may be capable of meaning the claimant has in fact committed some serious act ('*Chase* Level 1 meaning');

(b) alternatively, the words may mean that there are reasonable grounds to suspect that the claimant has committed such an act ('*Chase* Level 2 meaning'); and

(c) a third possibility is that the words may mean that there are grounds for investigating whether the claimant is responsible for such act ('*Chase* Level 3 meaning'); (emphasis added)

[36] The entirety of the respondent's defamatory statements cast a wide net of an array of gruelling statements which clearly impugned the character and reputation of the appellant. Notwithstanding the manner in which the respondent is attempting to couch his statements, it remains plain and obvious that the defamatory statements (in its totality) went to the highest and most extreme *Chase* Level 1 imputation that the appellant had indeed committed the wrong (the serious act). We are aware that there were parts of the respondent's defamatory statement which were slightly more cautious as to refer to an 'alleged' serious act but at the same time, there were also parts of the respondent's defamatory statements that unequivocally and unconditionally declare that the appellant had indeed undoubtedly committed the serious act:

Lim Guan Eng (LGE): "Exco telah bermesyuarat pada hari ini dan kita terkejut dengan laporan dalam media bahawa Zenith telah buat bayaran sebanyak 22 juta ringgit kepada dua individu, satu seorang ahli peniaga yang namanya tak disebut dan satu lagi seorang yang bukan kawan kita tetapi yang kita kenali, iaitu

A ahli parliament UMNO Kawasan Baling Aziz Rahim, Yang Berhormat Aziz Rahim yang terima 3 juta, seorang peniaga lagi terima 19 juta, itu sesuatu yang kita tidak tahu langsung, dan nak tanya-tanyakan kerana ini adalah laporan di Malaysia Kini yang *kita nak tanya mengapa tiap-tiap kali macam ini, UMNO dapat habuan, UMNO dapat untung, DAP yang tak dapat apa yang kena ...*

B tunnel project, *I finally discovered it is not state government leaders taking millions of ringgit it is one businessman which we don't know who and then our famous, our handsome looking Baling MP Aziz Rahim. Abdul Aziz Rahim, no wonder when ...*

C *government. Okay so why is Aziz Rahim not arrested? You arrest the other fella who took 19 million, take 3 million why is he not arrested. And another fellow whoever it is, why is he not arrested,* as reported in the press. Okay any other questions?

D *sebenarnya pemimpin UMNO, yang terima pemimpin UMNO ... yang kena kita yang terima pulak kena. ... tak terima wang pun kena terima wang tak kena ... itu yang karut sama sekali dan baru-baru keluar ... ha surat khabar mana keluar .... yang terima wang 22 ringgit 22 juta ringgit satu pihak peniaga 19 juta ringgit satu lagi ialah seorang ahli parlimen UMNO Azeez Rahim Pengerusi Lembaga Tabung Haji terima 3 juta ringgit ... apa ini kerajaan*

E *terima wang ... ha sekarang kita tahu yang terima wang orang UMNO dan seorang peniaga yang geng sama mereka ... yang ditangkap itu peniaga la tapi Azeez Rahim ahli parlimen UMNO*

berita keluar dalam surat khabar, fitnah berita palsu bahawa pemimpin kerajaan negeri terima wang berjuta-juta ringgit kerana projek ini, sebenarnya bukan kerajaan negeri Pulau Pinang, sebenarnya pemimpin UMNO, yang terima pemimpin UMNO ... (emphasis added)

F

[37] The excerpts above are clearly telling that there are large portions of the respondent's defamatory statements that does not merely call for an investigation, but are plainly and on unequivocal and certain terms that:

(i) the appellant "yang terima 3 juta" or received (not merely alleged to G have received) three million;

(ii) every time like this, UMNO (by extension of the appellant being an UMNO member) wrongfully obtained monies ("tiap-tiap kali macam ini UMNO dapat habuan"/"sebenarnya pemimpin UMNO, yang terima pemimpin UMNO"); and

H

(iii) with absolute certainty, the respondent declared that he himself discovered that the appellant had taken millions ("I finally discovered it is not State Government leaders taking millions of ringgits … it is our handsome looking Baling MP Azeez Rahim, Abdul Azeez Rahim …"/ "ha sekarang kita tahu yang terima wang orang UMNO").

I

[38] Nowhere in the excerpts above did the respondent merely alluded to an alleged serious act. Instead, the declarations that he made were of a high degree of certitude that the serious act had been committed, and that the appellant ought to be arrested for the commission of the serious act. Nowhere at all was the respondent merely calling for an investigation into the mere 'suspicion' of the serious act.

[39] In fact, the whole argument that the respondent was merely referring to the appellant as munition or example to criticise MACC for selective prosecution is *res ipsa loquitor* that the respondent was contending that the appellant had indeed committed the serious act and had taken 'habuan' from the PUTP. In no manner at all was the respondent merely calling for an investigation to be made against the appellant. In crying foul over MACC's supposed "witch hunt" against DAP, the respondent was using 'his truth' of the appellant's commission of the serious act as munition and leverage to prove his political point. In doing so, the respondent clearly declared and imputed the highest *Chase* Level 1 imputation that the appellant was already guilty of committing the serious act:

> jalan utama *kita sudah sabar lama takda rasuah you nak buat rasuah sekarang baru tahu yang wang keluar bagi orang UMNO pemimpin UMNO ahli parlimen UMNO apa cerita ini SPRM?*
>
> *Mengapa tak tahan Azeez Rahim? Adakah kerana dia ahli parlimen UMNO? adakah kerana dia pengerusi lembaga tabung.* (emphasis added)

[40] We have closely perused and examined the defamatory statements of the respondent and find that a majority portion of the defamatory statements was not at all capable of carrying multiple or alternative meanings other than that of a *Chase* Level 1 imputation (that the appellant had indeed committed the serious act). Thus, we answer Issue 1 in the positive. We are in full agreement with the learned judge's finding that the respondent's defamatory statements carried a *Chase* Level 1 imputation that the appellant had indeed committed a serious act (and not merely calling for an investigation of an alleged serious act).

Issue 2: Whether Or Not The Learned Judge Was Correct In Finding That The Respondent Had Succeeded In Proving The Defence Of Justification

[41] In such a case where the defamatory statements contain multiple levels of *Chase* Level imputations, the court cannot simply take an 'aggregate' and simply accept one uniform *Chase* Level justification to justify all levels of *Chase* Level imputations. This is not a case where a defamatory statement is capable of multiple meanings, either lesser or more serious. This is a case where there was a plethora of statements in which different statements were clear in its different levels of *Chase* imputations. In such a case, it would be unjust to absolve the respondent if he only succeeded to prove a *Chase* Level

A 3 justification (for a call for investigation) when there are clear defamatory statements which were *Chase* Level 1 imputation (for alleging the very guilt of committing the serious act).

[42] The necessary extent of 'truth' required for a successful defence of justification must commensurate and correspond with the *Chase* Level B imputation of the defamatory statement. Thus, since the respondent's defamatory statements are of the highest *Chase* Level 1 imputation, then the truth he must prove is the allegation of guilt itself. He cannot resile from his statement of guilt, just to cower behind the 'lesser truth' of a supposed call for an investigation into the commission of the serious act. We find great C guidance in the insightful words of S Nantha Balan J (now JCA) in the case of *Khairul Azwan Harun v. Mohd Rafizi Ramli* [2016] 9 CLJ 858; [2017] 9 MLJ 205:

> [97] Thus the approach and proof of the defence of justification in respect of each of the different levels of meanings is different:
>
> D (a) **in a *Chase* Level 1 meaning where the allegation is made with the highest degree of certitude then the imputation of guilt must be defended;**
>
> (b) in a *Chase* Level 2 meaning where the allegation is 'reasonable grounds to suspect' the Court of Appeal in *Musa King v. Telegraph* E *Group Ltd* [2004] EWCA Civ 613 at paras. 22-23 held a defendant has to prove the primary facts and matters giving rise to the reasonable grounds of suspicion objectively judged which includes the application of the conduct rule, the repetition rule and several odier principles known as 'the *Musa King* principles'; and
>
> F (c) in a *Chase* Level 3 meaning – the lesser imputation that there are grounds for investigation – the defendant is entitled to succeed upon proving that such grounds exist. The English Court of Appeal in *Jameel*'s case paras 29-30 held that grounds for enquiry/ investigation do not have to be shown to be 'objectively reasonable' as the point of the investigation is to discover whether G they are so. The *Musa King* principles do not apply to the defence of justification under this *Chase* Level 3 meaning (see *Gadey on Libel and Slander* (12th Ed) para 11.13 pp. 407-410).
>
> (emphasis added)

[43] The above scintillating principle considered, we answer Issue 2 in the H negative. The learned judge had certainly erred in finding that the respondent had succeeded in proving the defence of justification.

[44] It was apparent that the learned judge had wrongfully applied the wrong *Chase* Level 3 justification to absolve the respondent's *Chase* Level 1 imputation. It was clear that the learned judge had only referred to 'truths' I that:

(i) there was ground to query on the reason why the appellant was not arrested by the MACC while the other named individual in the NOD was arrested;

(ii) there was news that reported that the appellant allegedly ("dikatakan") received RM3,000,000 from Zenith;

(iii) Zenith had issued the NOD to claim the RM3,000,000 allegedly paid to the appellant; and

(iv) the appellant was believed ("dipercayai") or alleged ("didakwa") to have received RM3,000,000 from Zenith.

[45] The above 'truths' were nowhere near sufficient to justify the respondent's highest *Chase* Level 1 imputation that he himself had 'discovered' that the appellant had fraudulently taken RM3,000,000 from the PUTP through his influence and manipulation as an UMNO Supreme Council Member. Since the respondent had made *Chase* Level 1 imputations in an unequivocal term, then it is only proper and just that he must defend the very imputation of guilt. Thus, the mere truths of 'reports of an alleged serious act' and 'grounds to investigate an alleged serious act' are simply and utterly insufficient. Since the respondent had unmitigated confidence in his statement of guilt, then the respondent must have the same unmitigated confidence that he can defend the same imputation of guilt.

[46] First of all, it must be remembered that the respondent is not a common layperson. The respondent is a renowned and seasoned veteran in the political arena. The respondent is also not any stranger to the workings of litigation and the court, considering his previous involvements with the law and the court (as can be seen from the law reports) throughout his venerable political career. Thus, it ought to have been absolutely clear to the respondent that a mere notice of demand is a far cry from absolute evidence of guilt. But instead, he took the NOD and ran a media campaign with it. A mere notice of demand by a lawyer, however serious it may seem, can, at best, be a mere demand and not at all any cogent proof of the contents of the notice of demand. A respected political veteran of the respondent's stand and calibre must have identified this obvious fact.

[47] Secondly, the fact of the arrest of the other named individual in the NOD at best, is just one fact that would justify the imputation that an investigation ought to be conducted as to why the appellant was not arrested alongside the other named individual. The respondent should have understood the dangers and impropriety of unsubstantiated remarks when a matter is only at a point of investigation. Nor were there any charges or prosecution mounted against any personalities at the time the respondent published his defamatory statements. Thus, the fact of the arrest does not at all justify the respondent's imputation of guilt.

[48] Thirdly, throughout the entirety of the trial, it was apparent that the respondent had never endeavoured to embark on his own verification of the contents of the NOD. All that was testified was that the respondent relied on the NOD, the arrest of the other named individual, and the fact that (at the relevant time) the appellant has yet to respond to the NOD. There was no evidence whatsoever of the respondent reaching out to the appellant or even Zenith for verification. In essence, there was no verification exercise whatsoever.

[49] There was obviously a sense of hastiness and peculiar urgency in the respondent's publication of the defamatory statements. It needs to be highlighted that the NOD only stood for one week before it was retracted and withdrawn by Zenith. The appellant's solicitors issued a response to Zenith's NOD just two days after the appellant's receipt of the NOD. The NOD was withdrawn only two days after the appellant's official response. And the respondent published his defamatory statements just one day after the appellant's receipt of the NOD.

[50] We are only talking of the period of a few days which were less than a week which was obviously insufficient for even a preliminary investigation to be completed for such a serious allegation. The inexplicable, unusual, and exceptional hastiness and unwarranted urgency of the respondent were clearly reflective of the respondent's disinterest and indifference of any truth of the NOD. It clearly shows that the respondent's main objective is to just spread the imputation of guilt to the masses as quickly as possible before the appellant was afforded a reasonable opportunity to respond against the NOD. And the fact that the 2018 General Elections was only a few months away further crystallises the ulterior motive in the respondent's hasty and hurried publication of the defamatory statements.

Issue 3: Whether Or Not The Respondent Could Rely On The Defence Of Fair Comment Or Qualified Privilege

[51] For the sake of completeness, since the respondent has failed in his defence of justification, we must endeavour to determine if any of the other two defences (fair comment and qualified privilege) can be of any saving grace to the respondent's defence.

[52] Succinctly, a fair comment is exactly what a comment entails – a comment or an expression of an opinion. A fair comment is more of a statement of opinion (reactionary to a fact) rather than a statement of fact in itself. The defence of fair comment is codified within s. 9 of the Defamation Act 1957:

> 9. In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[53] We do not hesitate in finding that the respondent's defamatory statements were, by and large, an unequivocal statement of fact and not merely an expression of opinion. Indeed, we are aware that the respondent had expressed some scathing opinions and remarks against the MACC and rival political parties, but we are minded that the scathing opinion was leveraged on other statements of fact that the appellant had indeed committed the serious act. Thus, in the limited instances of the respondent's criticism against MACC and rival political parties, those statements were an expression of an opinion. However, the same cannot at all be said regarding the resounding majority of the defendant's defamatory statements which were a clear statement of fact (of the appellant's guilt).

[54] In the respondent's unequivocal declaration that he had 'discovered' that the appellant had unlawfully took RM3,000,000 from the PUTP, was clearly a statement of fact and not an opinion. Clearly stating that UMNO had obtained 'habuan' and monies *via* the appellant's corrupt involvement in the PUTP was also a statement of fact and not an opinion. Thus, the respondent have failed to prove one of the most crucial elements in the defence of fair comment as recently restated by the Court of Appeal in the case of *Raja Syahrir Abu Bakar & Anor v. Manjeet Singh Dhillon & Other Appeals* [2019] 4 CLJ 301; [2020] 3 MLJ 482:

(i) the impugned statements were comments or opinions which were based on true facts;

(ii) the comments or opinions were regarding matters of public interest; and

(iii) the comments were made without malice and with genuine concern for the truth.

[55] The respondent has also failed to prove the element of good faith and genuine concern for the truth. As we have deliberated earlier, the respondent's inexplicable haste and urgency were reflective of malice and indifference to the truth. In fact, the respondent's allusion or reference to the appellant's position as the Chairman of the Board of Tabung Haji (which was totally unrelated to the PUTP) was clearly indicative of a malicious *ad hominem* (personal) attack against the appellant's integrity and reputation. Even the respondent's own defamatory statements had indicated that the respondent was fully aware that the appellant's position in Tabung Haji was a different matter altogether ("tapi itu perkara lain"):

> *Mengapa tak tahan Azeez Rahim? Adakah kerana dia ahli parlimen UMNO? adakah kerana dia pengerusi lembaga tabung haji? Ini saya rasa ... pun tidak baik kepada lembaga tabung haji* tapi itu perkara lain ... yang SPRM macam mana (inaudible) ... so (emphasis added)

[56] The respondent himself declared that the appellant's position in Tabung Haji was a separate matter altogether wholly unrelated to the alleged serious act. But notwithstanding the awareness of such irrelevance, the respondent still saw it fit to raise concerns about the appellant's position in Tabung Haji in light of the appellant's supposed guilt in the commission of the serious act. The Court of Appeal in *Raja Syahrir Abu Bakar & Anor v. Manjeet Singh Dhillon & Other Appeals* [2019] 4 CLJ 301; [2020] 3 MLJ 482 have also dismissed the defence of fair comment when there was an element of malice and indifference to the truth:

> [69] More significantly, the learned judge found the first defendant **'actuated with malice'** when he made his charges against the plaintiff, and **was actually indifferent to the truth of what he had commented on,** so long as he could get to the opposition leader. For the same reasons, **s. 9 of the Defamation Act was not available to the first defendant.**
>
> [70] We agree with the learned judge. The finding of malice was with basis and we have no reason to disturb such findings of fact. The learned judge had evaluated the entire body of evidence and had heard the testimonies of the plaintiff and the first defendant before concluding that she had no reason not to accept the plaintiff's testimony that he had never known the first defendant. (emphasis added)

[57] On the same score, the defence of fair comment is not available to the respondent as it is plain and obvious that the respondent was indifferent of the truth and was ready and eager to maliciously pluck any issue so as to impugn the character and reputation of the appellant.

[58] Considering our finding regarding the respondent's malice, indifference to the truth, and failure in any exercise of verification, the respondent would also fail the threshold of the test of "responsible journalism" to succeed in a defence of qualified privilege. The responsible journalism test was first propounded in the landmark House of Lords decision in the case of *Reynolds v. Times Newspapers Ltd & Ors* [1999] 4 All ER 609:

> In considering whether allegations made in the press attracted qualified privilege, the matters to be taken into account, depending on the circumstances, included: the seriousness of the allegation; the nature of the information and the extent to which the subject matter was a matter of public concern; the source of the information; the steps taken to verify the information; the status of the information; the urgency of the matter; whether comment had been sought from the plaintiff; whether the article contained the gist of the plaintiff's side of the story; the tone of the article; and the circumstances of the publication, including the timing.

[59] The respondent has failed in many fronts of the responsible journalism test in that:

(i) the respondent did not take any step of his own to verify the information;

(ii) the respondent never sought any comment or response from the appellant for verification;

(iii) the tone of the respondent's defamatory statements was of the highest *Chase* Level 1 imputation (of guilt) and not merely a query or call for an investigation;

(iv) the hastiness and perplexing rush in the respondent's defamatory statements clearly reflect the respondent's indifference of the truth and disinterest to a proper investigation; and

(v) the timing of the respondent's hasty publications was too 'conveniently' close to the 2018 General Elections.

[60] Thus, as much as the respondent had tenaciously contended that he was privileged to speak on the matter out of genuine interest of the public at large, it is instead thoroughly clear that his defamatory statements were not as noble as the respondent propped them up to be. Instead of genuinely safeguarding the public interest, it is plain and obvious to us that the respondent had acted for the benefit of his own political and personal agenda and interest.

[61] All of the above deliberations in this part considered, we hereby answer Issue 3 in the negative. The respondent was clearly not entitled to rely on the defence of fair comment or qualified privilege.

Our Decision

[62] There is no necessity at all for us to protract our judgment to deliberate the element of publication and reference of the defamatory statements to the appellant. It is sublimely plain and obvious (and even admitted by the respondent himself) that the defamatory statements personally named and referred to the appellant and that the defamatory statements were undoubtedly published by the respondent. There is no reason for any appellate intervention against the learned judge's decision regarding the element of publication and reference of the defamatory statements to the appellant.

[63] Considering all of the above deliberations, we hereby allow the present appeal limited to the following extent:

(i) we agree with the learned judge's findings that the respondent's defamatory statements carried the highest *Chase* Level 1 imputation that the appellant was guilty of the commission of the serious act;

A (ii) however, the learned judge had fallen into error in finding that the respondent had proven his defence of justification. We hereby set aside this portion of the learned judge's decision and we now find that the respondent is not at all entitled to rely on the defence of justification; and

B (iii) we also find that the respondent is not at all entitled to rely on the defence of fair comment or even qualified privilege.

Damages

[64] Considering the recent range of damages in cases for defamation (see C *Lim Guan Eng v. Ruslan Kassim & Another Appeal* [2021] 4 CLJ 155; [2021] 2 MLJ 514; *Raja Syahrir Abu Bakar & Anor v. Manjeet Singh Dhillon & Other Appeals* [2019] 4 CLJ 301; [2020] 3 MLJ 482), we hereby award RM250,000 in general damages in favour of the appellant to be paid by the respondent.

Costs

D

[65] We also order costs of RM70,000 here and below to be paid by the respondent to the appellant, subject to allocatur.

E

F

G

H

I